

PERM UPDATE: WHAT'S HAPPENING NOW?

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by

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The new PERM labor certification system officially started on March 28, 2005, when the Department of Labor began accepting filings of the new labor certification form (ETA Form 9089). Filing of this form can be done in two ways: (1) online via the Internet; and (2) through the mail. The Department of Labor strongly encourages filing the form online since it will result in faster processing and less likelihood that an error will be made by the DOL staff, as they are required to manually input information from the mailed-in forms into the computer.

As to online filing, it is important to note that the employer will be required to make an initial registration at the DOL website. Once the employer registers, they will be able to create a sub-account within their account for their attorney. One of the main reasons for this requirement is so that the DOL can make sure the employer is aware that a labor certification is being filed on their behalf and to require the employer to make certain attestations or statements regarding the application.

The American Immigration Lawyers Association reported on April 18, 2005 that it had not received any reports of any PERM cases being approved by that date. This is not unexpected since the estimated turnaround time for most PERM cases that are not audited by the Department of Labor is 45-60 days from the date of filing. Even though the first day a case could be filed was March 28, 2005, many cases have been delayed due to the lack of a prevailing wage determination issued by the State Workforce Agency. A prevailing wage determination is issued by the SWA based on the job information submitted. The SWA issues a prevailing wage which must be offered for that specific job opportunity. In the past, the employer only had to offer 95% of the prevailing wage for a labor certification case. However, recent changes in the law now require 100% of the prevailing wage to be offered for the job.

In addition to requiring 100% of the prevailing wage to be paid, the new law also requires the State Workforce Agency to use a new system to calculate the prevailing wage. SWAs previously had a two-tier system for determining the prevailing wage, and are now required to use a four-tier system. The four-tier system requires a more in-depth review of the specific requirements of the proposed job. Since the SWAs only recently received training under this new system, they have been slow in issuing prevailing wage

determinations. Without receiving a prevailing wage determination, PERM cases could not be filed. As a result, many PERM cases could not be filed on March 28, 2005.

In addition, under the four-tier prevailing wage system, any special job requirements, such as a specific language requirement, will increase the level of the job. For example: A job with standard requirements for the industry may be given the wages for the first tier of the system, but the same job with the same requirements and an additional requirement of a foreign language will increase the wages to the second tier of the system. Each level of the tier system has a higher wage rate.

As lots of issues remain unclear, the Department of Labor is accepting questions from attorneys, employers and individuals regarding the PERM system. In addition to their online frequently asked questions regarding PERM (found at <http://www.ows.doleta.gov/foreign/faqs.asp>), the DOL has published two additional lists of frequently asked questions (available at http://www.ows.doleta.gov/foreign/pdf/perm_faqs_4-6-05.pdf and http://www.ows.doleta.gov/foreign/pdf/perm_faqs_3-3-05.pdf).

As always, you can also stay tuned to www.longchangonline.com for updates on PERM.

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